

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KAREN WASHBURN

Claimant

VS.

HOPKINS MANUFACTURING

Respondent

AND

ZURICH INSURANCE COMPANY

CNA INSURANCE COMPANIES

Insurance Carriers

Docket No. 217,353

ORDER

Respondent and its insurance carrier, CNA Insurance Companies, appeal from the Order Nunc Pro Tunc of Assistant Director Brad E. Avery dated June 9, 1998, clarifying the Order for Compensation issued by Administrative Law Judge Floyd V. Palmer on February 13, 1998.

ISSUES

Respondent and its insurance carrier, CNA Insurance Companies, raise the following issues for Appeals Board consideration.

- (1) Did claimant suffer accidental injury?
- (2) Did the alleged injury arise out of and in the course of claimant's employment?
- (3) Was notice timely given?
- (4) What is the date of claimant's alleged accidental injury?
- (5) If the claimant proved a compensable claim, which insurance carrier is responsible for the payment of benefits?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Claimant has had a long and varied injury history while in respondent's employment. Claimant's medical history, including treatments, restrictions, and symptoms is well set out in the brief of respondent and CNA Insurance Companies (CNA). It will not be repeated herein. Suffice it to say claimant's problems began in 1994 when she experienced pain in her hands, forearms, and wrists which waxed and waned through her last day of employment with respondent, October 27, 1997, at which time claimant requested she be laid off. Claimant's reason for requesting the layoff was that she hoped the layoff would give her hands and arms a chance to rest and improve. She acknowledged she was not in line for an involuntary layoff at that time.

Respondent and CNA argue that either September 8, 1994, which CNA argues is the date claimant last worked prior to being taken off work as a result of the physical problems, or September 18, 1994, which CNA argues is the last date claimant worked prior to being placed upon restrictions, should be the date of accident. In support, respondent and CNA cite three recent cases from the Court of Appeals dealing with micro-trauma dates of accident; specifically, Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994), Condon v. Boeing Co., 21 Kan. App. 2d 580, 903 P.2d 775 (1995), and Alberty v. Excel Corporation, 24 Kan. App. 2d 678, 951 P.2d 967, *rev. denied* 264 (Kan. __ 1998). The Appeals Board will not recite the various legal principles or dates of accident discussed in the above cases. At one time or another, claimant has met the criteria for proving accident in Alberty, Condon, and Berry. See Sutton v. Norland Plastics, Inc., Docket No. 183,710 and 223,862 (June 1998). Claimant has been on restrictions, off restrictions, had the restrictions changed, been placed on light duty, performed her regular duties, and ultimately requested she be laid off due to the pain in her hands, wrists, and arms. It is acknowledged claimant quit work on October 27, 1997. Claimant testified to a waxing and waning of symptoms through her last day worked.

The Kansas Court of Appeals in Berry, *supra*, discussed the complexities in finding a "date of injury" or "date of occurrence" in a carpal tunnel micro-trauma case. Condon expanded the discussion beyond carpal tunnel syndrome and into an entire gamut of possible afflictions stemming from micro-trauma exposure. In this instance, claimant has been diagnosed with a multitude of problems including bilateral median nerve paresthesia at the wrists, tendinitis, possible fibromyalgia, myofascial pain in both forearms, possible thoracic outlet syndrome, and arm pain, etiology uncertain. It is apparent from the medical evidence and from claimant's testimony that she has suffered numerous micro-trauma injuries while employed with respondent. Her condition has not remained constant but has varied in severity over a period of several years.

This case is a poster child for the complexities of micro-trauma injuries lasting over a period of time and displays well the difficulties associated with identifying a date of accident. In considering all the circumstances, the Appeals Board finds that the appropriate date of accident in this matter must be decided based in part upon the logic of Helms v. Tollie Freightways, Inc., 20 Kan. App. 2d 548, 889 P.2d 1151 (1995). In Helms, the Court of Appeals found that the "last injurious exposure" rule assigns liability to the carrier covering the risk at the time of the most recent injury that bears a causal relationship to the original disability. In this instance, claimant's many and varied symptoms ultimately resulted in her voluntary layoff on October 27, 1997.

The Administrative Law Judge, in the original Order of February 13, 1998, found October 27, 1997, to be the culmination of a long series of accidents and the appropriate date upon which benefits should be paid. The Appeals Board, in considering the totality of the evidence, the logic of Berry, and the logic of Helms, agrees and finds the appropriate date of accident to be October 27, 1997, and finds that claimant did prove accidental injury arising out of and in the course of her employment with respondent through her last day worked and that appropriate notice of claimant's accidental injuries was provided to respondent on an ongoing basis. Therefore the assessment of the liability against the respondent and its insurance carrier, CNA Insurance Companies, is appropriate.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer dated February 13, 1998, and the stipulated Order Nunc Pro Tunc of Assistant Director Brad E. Avery dated June 9, 1998, should be, and are hereby affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1998.

BOARD MEMBER

c: James C. Wright, Topeka, KS
Wade A. Dorothy, Lenexa, KS
D. Steven Marsh, Wichita, KS
Brad E. Avery, Assistant Director
Philip S. Harness, Director